

BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, D.C.



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Office of Proceedings

STB Finance Docket No. 34929

SEP 01 2006

Part of  
Public Record

JEFFREY L. SUTCH  
-- CONTINUANCE IN CONTROL EXEMPTION --  
SMS RAIL LINES OF NEW YORK, LLC

FILED

SEP 01 2006

SURFACE  
TRANSPORTATION BOARD

VERIFIED NOTICE OF EXEMPTION  
OF  
JEFFREY L. SUTCH

FILE RECEIVED

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SURFACE  
TRANSPORTATION BOARD

Fritz R. Kahn  
Fritz R. Kahn, P.C.  
1920 N Street, NW (8<sup>th</sup> fl.)  
Washington, DC 20036-1601  
Tel.: (202) 263-4152

Attorney for

JEFFREY L. SUTCH

Dated: September 1, 2006

BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, D.C.

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STB Finance Docket No. 34929

JEFFREY L. SUTCH  
-- CONTINUANCE IN CONTROL EXEMPTION --  
SMS RAIL LINES OF NEW YORK, LLC

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VERIFIED NOTICE OF EXEMPTION  
OF  
JEFFREY L. SUTCH.

Applicant, Jeffrey L. Sutch, pursuant to 49 C.F.R. 1180.2(d)(2) and 1180.4(g), states, as follows:

1. The name and address of the Applicant is:

Jeffrey L. Sutch  
P. O. Box 711  
Bridgeport, NJ 08014  
Tel.: (856) 467-4800

2. The name and address of the Applicant's representative to whom correspondence should be addressed are:

Fritz R. Kahn  
Fritz R. Kahn, P.C.  
1920 N Street, NW (8<sup>th</sup> fl.)  
Washington, DC 20036-1601  
Tel.: (202) 263-4152

3. The proposed transaction is expected to be consummated on or after seven days from the date of filing hereof.

4. Applicant controls SMS Rail Service, Inc., which renders common carrier railroad operations in the Pureland Industrial Complex at Bridgeton, NJ, pursuant to STB Finance Docket No. 32494, SMS Rail Service, Inc.–Lease and Operation Exemption–Pureland Association, Inc., served May 26, 1994; Penn Warner Industrial Park, pursuant to STB Finance Docket No.33835, Penn-Jersey Rail Lines, Inc.–Acquisition and Operation Exemption–Lines in Penn Warner Industrial Park, Falls Township, Bucks County, PA, served May 2000,<sup>1/</sup> and the Complex at Paulsboro, NJ, pursuant to STB Finance Docket No. 33927, SMS Rail Service, Inc.–Acquisition and Operation Exemption–Valero Refining Company-New Jersey, served September 22, 2000.

4. Applicant seeks Board approval to continue in control of SMS Rail Lines of New York, LLC, upon its becoming a common carrier railroad pursuant to the contemporaneously filed Verified Notice of Exemption in STB Finance Docket No. 34928, SMS Rail Lines of New York, LLC–Acquisition and Operation Exemption–Northeastern Industrial Park, Inc.

5. Applicant states that (1) the rail lines to be acquired and operated by SMS Rail Lines of New Jersey, LLC, are located in Albany County, NY, and do not connect with the rail lines of of SMS Rail Service Inc., which are located in Bucks County, PA, and Gloucester County, NJ or with those of any other railroad within Applicant's corporate family; (2) the proposed continuance in control of SMS Rail Lines of New York is not part of a series of anticipated transactions that would connect the railroad with the railroad lines of SMS Rail Service, Inc., or any railroad in Applicant's corporate family; and (3) the proposed transaction does not involve a

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<sup>1/</sup> Penn-Jersey Rail Lines, Inc., was merged into SMS, pursuant to STB Finance Docket No. 34300, Jeffrey L. Sutch and Leonard J. Smolsky–Notice of Exemption–Intra-Corporate Family Transaction, served January 17, 2003. In the meantime, Mr. Smolsky sold his interest in SMS to Mr. Sutch.

Class I railroad. The proposed transaction, pursuant to 49 C.F.R. 1180.2(d)(2), accordingly, is exempt from the prior approval requirements of 49 U.S.C. 11323.

6. SMS Rail Lines of New York, LLC, will operate as a common carrier railroad in Albany County, NY.

7. Maps showing the location of the lines of the two railroads are attached.

8. The proposed transaction involves only Class III rail carriers, and, thus, pursuant to 49 U.S.C. 11326(c), no provision need be made for affected employees.

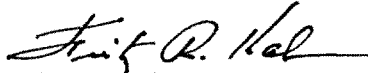
9. There are no executed or draft contracts or other written instruments pertaining to proposed transaction.

10. Since the proposed transaction, seeking an exemption to permit the continuance in control otherwise subject to the provisions of 49 U.S.C. 11323, will result in no significant changes in railroad operations, that is, no increase in rail traffic of more than fifty percent or three trains a day on any segment of rail line or a twenty percent increase in rail yard activity, no environmental documentation is required, pursuant to 49 C.F.R. 1105.6(c)(2). Similarly, since the proposed transaction requires no environmental documentation, no historic report is required, pursuant to 49 C.F.R. 1105.8(a).

Respectfully submitted,

JEFFREY L. SUTCH

By his attorney,



Fritz R. Kahn

Fritz R. Kahn, P.C.

1920 N Street, NW (8<sup>th</sup> fl.)

Washington, DC 20036-1601

Tel.: (202) 263-4152

Dated: September 1, 2006

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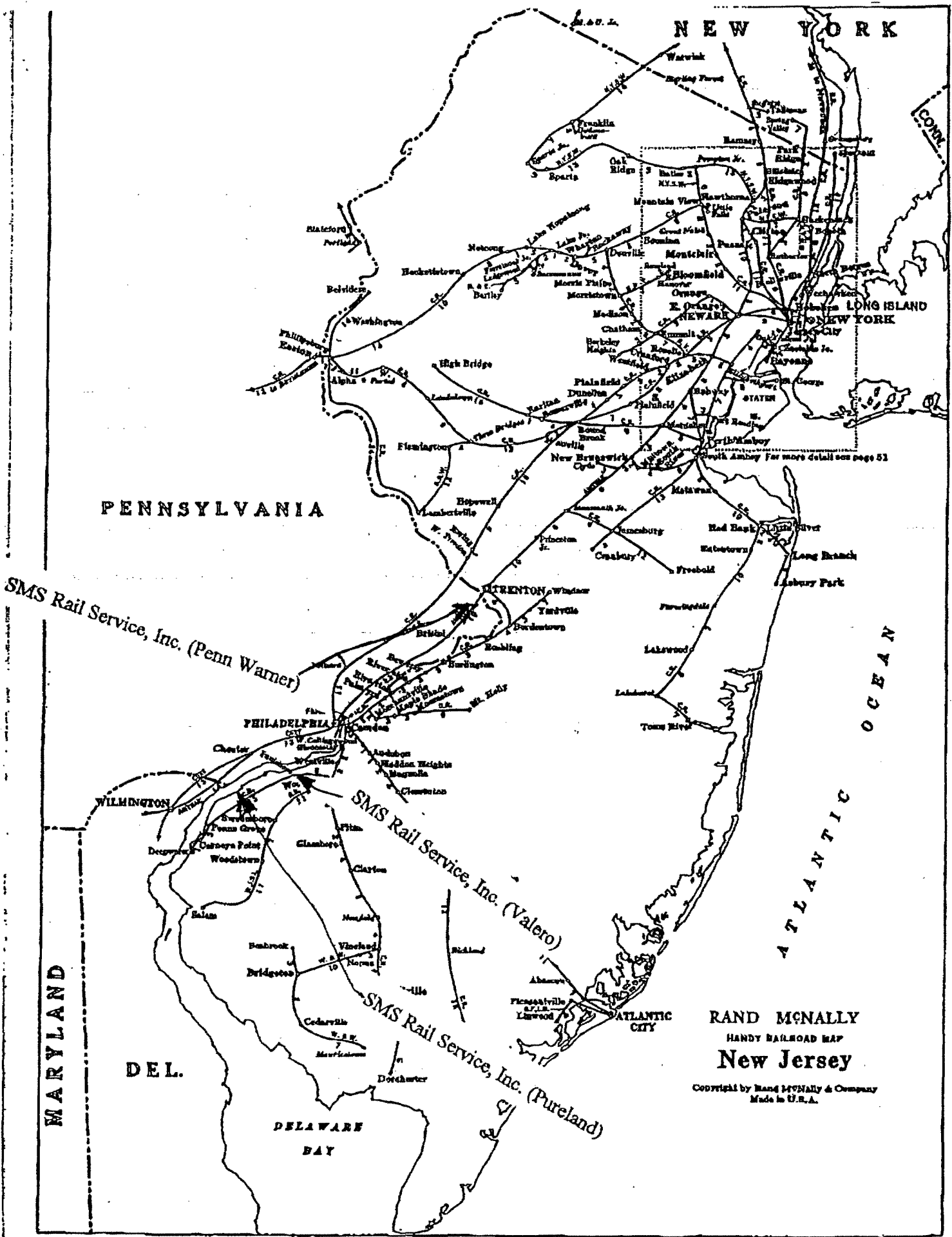
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**EASTERN PORTION**  
**OF**  
**LONG ISLAND, N.Y.**

The map illustrates the SMS Rail Lines of New York, LLC, with several key locations and routes. The main line runs from Locus Falls in the west to Gloversville in the east. Key locations along this line include Locus Falls, Holland Patent, Little Falls, and Gloversville. A branch line runs from Little Falls to the north, passing through Little Falls and Gloversville. Another branch line runs from Little Falls to the south, passing through Little Falls and Gloversville. The map also shows various other locations and lines, including the Erie Railroad, the Delaware and Hudson Canal, and the New York and Pennsylvania Railroad. The map is oriented with North at the top.

**JERSEY**  
For more detail,  
see page 51

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PENNSYLVANIA

NEW YORK

CONN.

ATLANTIC OCEAN

SMS Rail Service, Inc. (Penn Warner)

SMS Rail Service, Inc. (Valero)

SMS Rail Service, Inc. (Pureland)

MARYLAND

DEL.

DELAWARE BAY

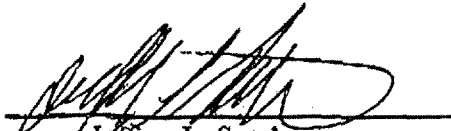
RAND McNALLY  
HANDY RAILROAD MAP  
New Jersey

Copyright by Rand McNALLY & Company  
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## VERIFICATION

I, Jeffrey L. Sutch, being the President of SMS Rail Service, Inc., and of SMS Rail Lines of New York, LLC, and being authorized to make this representation on their behalf, declare under penalty of perjury in accordance with 18 U.S.C. 1621 that I have read the foregoing Verified Notice of Exemption of Jeffrey L. Sutch., and attest that its factual assertions are true and correct to the best of my knowledge, information and belief. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to five years and fines up to \$10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to \$2,000 or imprisonment up to five years for each offense.

Dated at Bridgeport, NJ, this 1 day of September 2006.



Jeffrey L. Sutch